

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 969

Short Title: License Masonry Contractors.

(Public)

Sponsors: Senator Soles.

Referred to: State Government.

April 19, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE LICENSING OF MASONRY CONTRACTORS.
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 87 of the North Carolina General Statutes is amended by
5 adding a new Article to read:

6 **“ARTICLE 9.**
7 **“MASONRY CONTRACTORS.**

8 **“§ 87-116. License required.**

9 No person, firm, corporation, or partnership may engage in or offer to engage in the
10 business of a masonry contractor without first having been licensed under this Article.

11 **“§ 87-117. Definitions.**

12 As used in this Article, unless the context requires otherwise:

- 13 (1) ‘Board’ means the North Carolina State Board of Examiners in
14 Masonry Contracting;
15 (2) ‘Business of a masonry contractor’ means any person who for
16 compensation, constructs, repairs, or improves any masonry on the
17 property of another; or any person, whether or not for consideration,
18 constructs, repairs, or improves any masonry on property which, at the
19 time of such construction, repair, or improvement, was intended for
20 resale or for use as rental property;
21 (3) ‘Masonry contractor’ means a person who undertakes or offers to
22 undertake to construct, repair, or improve a building, conduit, or other
23 structure or improvement, or any interior part thereof, using brick,
24 stone, concrete masonry units, glass block, grout fill, or any other

1 material which itself or in combination with other materials, is
2 considered to be masonry or masonry work by industry custom or
3 meaning, and includes the furnishing of labor and materials incident
4 thereto.

5 (4) The definitions contained in Chapter 12 of the General Statutes apply
6 to this Article.

7 **"§ 87-118. Board of Examiners created; appointment; term of office.**

8 There is created a State Board of Masonry Contractors consisting of seven members
9 appointed as follows: one member from the Department of Community Colleges who is
10 involved in the basic training and education of masons, appointed by the President of
11 the Community College system; one member from a public high school who is involved
12 in the basic training and education of masons, appointed by the Superintendent of Public
13 Instruction; and five appointed by the Governor. Of the Governor's initial appointees,
14 three shall be masonry contractors who have been engaged in the business of masonry
15 contracting for at least three years immediately preceding the appointment, one of
16 whom has three years experience in residential masonry contracting; and two shall be
17 members of the public at large who have no ties to the construction industry. Of the
18 Governor's subsequent appointees, the three nonpublic members shall be licensed
19 masonry contractors. Board members shall serve a term of five years, except that of the
20 initial appointees, one shall be appointed for a one-year term, one shall be appointed for
21 a two-year term, one shall be appointed for a three-year term, two shall be appointed to
22 four-year terms, and two shall be appointed to five-year terms. The terms of initial
23 members shall be assigned by the Governor. No person appointed after 1997 shall serve
24 more than one term. All initial appointments shall be made by the appointing authority
25 not later than 30 days after the effective date of this Article. Vacancies occurring during
26 a term shall be filled by appointment by the Governor for the remainder of the
27 unexpired term.

28 **"§ 87-119. Removal, qualifications, and compensation of members; expenses of the**
29 **Board.**

30 The Governor may remove any member of the Board for misconduct, misfeasance,
31 malfeasance, nonfeasance, incompetence, neglect of duty, or other cause. Each member
32 of the Board shall be a resident of this State and shall receive per diem compensation
33 and reimbursement for travel and subsistence as provided for in G.S. 93B-5.

34 The total expense of the administration of this Article shall not exceed the total
35 income from fees collected pursuant to this Article. None of the expenses of the Board,
36 or the compensation or expenses of any officer or any employee of the Board shall be
37 paid or payable from State funds. Neither the Board nor any of its officers or
38 employees may incur any expenses, debt, or other financial obligation binding upon the
39 State.

40 **"§ 87-120. Board meetings.**

41 Within 30 days after the appointment of at least five members, the Board shall hold a
42 meeting in Raleigh to organize and to elect a chairman, vice-chairman, and secretary-
43 treasurer to serve a term of one year. The secretary-treasurer shall give bond approved
44 by the Board for the faithful performance of its duties, in such amount as the Board may

1 from time to time determine. The Board shall have a common seal and shall adopt rules
2 necessary to carry out the provisions of this Article.

3 After its organizational meeting the Board shall meet at least once each calendar
4 quarter. Special meetings may be held at such times and at such places as the bylaws or
5 rules provide, or as may be required in carrying out the provisions of this Article. A
6 quorum of the Board shall consist of not less than four members.

7 **"§ 87-121. Powers and duties of the Board.**

8 (a) Record keeping – The Board shall keep a record of its proceedings and a
9 register of all applicants for examination, showing the date of each application, the
10 name, age, and other qualifications, and place of business and residence of each
11 applicant. The books and records of the Board shall be **prima facie** evidence of the
12 correctness of the contents thereof. On or before the first day of March of each year the
13 Board shall submit to the Governor and to the General Assembly a report of its
14 activities for the preceding year, and file with the Secretary of State a copy of such
15 report, together with a statement of receipts and expenditures of the Board, attested by
16 the chairman and secretary.

17 (b) Licensure qualifications – The Board shall prescribe the standard of
18 competence and efficiency to be required of an applicant for licensure, and shall give an
19 examination designed to ascertain the technical and practical knowledge of the applicant
20 concerning the analysis of plans and specifications, estimations costs, fundamentals of
21 installation and design, and related subjects. The Board shall, upon payment of the
22 applicable license fee authorized under this Article, issue a license to each person who
23 passes the examination and otherwise qualifies under this Article. Each application for
24 examination shall be accompanied by a check, money order, or other certified funds in
25 the amount of the annual examination fee required by this Article. Regular
26 examinations shall be given at least two times each year. A person who fails an
27 examination on the first attempt may be reexamined at the next regular examination and
28 is not required to pay an additional examination fee; however, if an applicant fails two
29 examinations and wishes to retake the examination for a third or subsequent time, he is
30 required to reapply and pay a new examination fee for each subsequent examination.

31 (c) Employees – The Board may employ personnel necessary for the
32 performance of its functions, and may fix their compensation, within the limits of the
33 funds available to the Board.

34 **"§ 87-122. Fees; expiration and renewal of licenses; penalty.**

35 (a) License fees – All persons engaged in the business of a masonry contractor
36 shall pay an annual license fee not to exceed one hundred dollars (\$100.00). If a
37 masonry contractor has a Class I limited license or a Class II license, the annual license
38 fee shall be fifty dollars (\$50.00). If the masonry contractor has a Class I intermediate
39 license, the annual license fee shall be seventy-five dollars (\$75.00); and if the masonry
40 contractor has a Class I unlimited license, the annual license fee shall be one hundred
41 dollars (\$100.00). In the event the Board refuses to license an applicant, the license fee
42 is refundable. All licenses shall expire on the last day of December in each year
43 following their issuance or renewal. It shall be the duty of the secretary-treasurer to
44 mail to every person licensed under this Article notice of the amount of fee required for

1 renewal of license, such notice to be mailed to the person's last known address at least
2 60 days prior to the expiration of said license. In the event of failure on the part of any
3 licensee to make a timely application for renewal of license and pay the fee therefor, the
4 Board shall increase said license fee by ten percent (10%) for each month or fraction of
5 a month that payment is delayed; provided that the penalty for nonpayment shall not
6 exceed the amount of the annual fee, and provided further that the Board shall require
7 reexamination upon failure of a licensee to renew within one year after expiration. The
8 Board may adopt regulations requiring attendance at programs of continuing education
9 as a condition of license renewal.

10 (b) All license fees shall be paid in advance to the secretary-treasurer of the
11 Board and shall be held by him as a fund for the use of the Board.

12 (c) Examination fees – In addition to the license fee authorized by this Article,
13 the Board may charge an examination fee in an amount not to exceed fifteen dollars
14 (\$15.00). Such examination fee shall be retained by the Board without regard to whether
15 the applicant is granted a license.

16 **"§ 87-123. Types of licenses; qualifications for license.**

17 (a) The Board shall grant two classes of license: A Class I license, which shall
18 apply to all structures to which this Article applies, and a Class II license, which shall
19 apply to any structure used or intended for use as residential property. A Class I limited
20 license authorizes the holder of such license to engage in commercial projects where the
21 price or contract sum of all masonry work done does not exceed one hundred thousand
22 dollars (\$100,000). A Class I intermediate license authorizes the holder of such license
23 to engage in commercial projects where the price or contract sum of all masonry work
24 done does not exceed two hundred fifty thousand dollars (\$250,000). A Class I
25 unlimited license authorizes the holder of such license to engage in projects without
26 regard to the price or contract sum of all masonry work done. A person may qualify for
27 a Class I limited license or a Class II license by satisfying the requirements of
28 subsection (b) of this section. Applicants for a Class I intermediate or unlimited license,
29 in addition to satisfying the requirements of subsection (b) of this section, must produce
30 evidence satisfactory to the Board of experience and the ability to adequately perform
31 projects of a value in excess of one hundred thousand dollars (\$100,000) or two hundred
32 fifty thousand dollars (\$250,000). Such evidence shall include evidence of financial
33 responsibility, including evidence that the licensee has a working capital equal to at
34 least ten percent (10%) of the maximum amount of the project authorized by the license
35 applied for, or, in the case of an unlimited license, a working capital of at least thirty-
36 five thousand dollars (\$35,000).

37 (b) With respect to each person licensed by examination, the applicant shall
38 produce evidence satisfactory to the Board:

39 (1) That he has completed all training including a period of apprenticeship
40 and a period as a journeyman, as prescribed by the Board;

41 (2) That he is of good moral character;

42 (3) That he has, or has made application for, a Federal Employer
43 Identification number, and that there are no tax liens filed against him

1 by the Internal Revenue Service or the North Carolina Department of
2 Revenue;

3 (4) If he has been bonded, the name of the bonding company and bond
4 number;

5 (5) That he carries or has made application for worker's compensation
6 insurance, public liability insurance and any other insurance required
7 by law.

8 In the event that the applicant has made application for any of the items listed above,
9 license may not be granted until such time as a tax number, or relevant policy of
10 insurance is issued.

11 (c) With respect to persons applying for license prior to December 31, 1989, the
12 applicant shall provide evidence satisfactory to the Board, that he has been engaged in
13 business as a masonry contractor for a period of three years, and that he meets the
14 qualifications of subsections (a), and subsection (b) (2), (3), (4), and (5) of this section
15 for the Class and category of license applied for. Provided, however, that no person
16 shall be issued a license under this subsection unless he has applied therefor on or
17 before December 31, 1992.

18 **"§ 87-124. Revocation or suspension of license for cause.**

19 (a) The Board shall have the power and duty to revoke or suspend the license of
20 any masonry contractor who is guilty of fraud, deceit, or misrepresentation in obtaining
21 a license, who fails to comply with any provision of this Article or any rule or
22 regulation adopted by the Board, or for gross negligence, incompetence or misconduct
23 in the practice of or carrying on the business of a masonry contractor; provided,
24 however, that a license may not be revoked or suspended for simple negligence, simple
25 breach of contract, or simple failure to pay a supplier of materials. Any person may
26 prefer charges of such fraud, deceit, gross negligence, incompetence, misconduct, or
27 failure to comply with the provisions of this Article or any regulation adopted by the
28 Board against any masonry contractor who is licensed under the provisions of this
29 Article. Such charges shall be in writing and verified by the complaining person, and
30 shall be heard and determined by the Board in accordance with the provisions of
31 Chapter 150B of the General Statutes.

32 (b) The Board shall adopt and publish reasonable rules and regulations consistent
33 with this Article, governing the revocation and suspension of licenses.

34 (c) The Board shall establish and maintain a system whereby detailed records are
35 kept regarding complaints against each licensee.

36 **"§ 87-125. Reissuance of revoked licenses; replacing lost or destroyed license.**

37 The Board may reissue a license to any person, firm, or corporation whose license
38 has been revoked provided that a majority of the board, or three or more members of the
39 board vote in favor of such reissuance for reasons deemed sufficient by the Board. A
40 new license to replace any license which is lost or destroyed may be issued, subject to
41 the rules and regulations of the Board.

42 **"§ 87-126. Violations made misdemeanor; employees of licensees excepted.**

43 (a) It is unlawful for a person, firm, partnership or corporation to do any of the
44 following:

- 1 (1) Engage in or offer to engage in the business of a masonry contractor
2 without having obtained a license under this Article;
- 3 (2) Give false or forged evidence to the Board when applying for or
4 obtaining a license under this Article;
- 5 (3) Impersonate or use the license of any other person while engaging in
6 the business of a masonry contractor;
- 7 (4) Engage in the business of masonry contracting under an expired,
8 suspended, or revoked license; or
- 9 (5) Willfully violate any provision of this Article.

10 Any person who does any of the aforementioned shall be guilty of a misdemeanor and,
11 upon conviction, shall be fined not less than five hundred dollars (\$500.00), or
12 imprisoned for not more than six months, or both.

13 (b) An employee working as an apprentice or journeyman under the supervision
14 of a person, firm, or corporation licensed under this Article, shall not be construed to
15 have engaged in the business of masonry contracting. For purposes of this section, a
16 license shall be deemed expired if, as of January 31 of each year, the renewal fee has
17 not been paid.

18 **"§ 87-127. Board may seek injunctive relief.**

19 Whenever it appears to the Board that any person, firm, partnership, or corporation
20 is violating any provision of this Article or of the rules and regulations promulgated
21 under this Article, the Board may apply to the superior court for a restraining order and
22 injunction to restrain further or continued violation. The superior courts are vested with
23 authority and jurisdiction to grant restraining orders to enforce the provisions of this
24 Article, irrespective of whether criminal prosecution has been instituted or
25 administrative sanctions imposed by reason of the violation. In such action, prior to
26 issuing a restraining order, the court need not find that the Board will suffer immediate
27 or irreparable harm or injury on account of continuing violation. The venue for actions
28 brought under this subsection shall be the superior court of any county in which such
29 facts are alleged to have been committed, or in the county where any defendant in such
30 action resides, or, where the defendant is a nonresident, in Wake County.

31 **"§ 87-128. Corporations, partnerships, and persons doing business under a trade**
32 **name.**

33 (a) A license may be issued in the name of a corporation provided that one or
34 more officers or directors of the corporation are licensed in accordance with the
35 provisions of this Article, and provided that such officers or directors execute contracts
36 in the name of such corporation and exercise general supervision over the work done
37 thereunder.

38 (b) A license may be issued in the name of a partnership provided one or more
39 general partners are licensed in accordance with the provisions of this Article, and
40 provided such general partner or partners execute contracts in the name of said
41 partnership, and exercise general supervision over the work done thereunder.

42 (c) A license may be issued in an assumed name or trade name, provided the
43 owner of the business conducted thereunder is licensed in accordance with the
44 provisions of this Article, and such owner shall execute contracts in the said trade name,

1 and exercise general supervision of the work done thereunder. Further provided that
2 before the Board shall issue a license in a trade name, the owner shall show that he has
3 complied with the provisions of G.S. 66-68.

4 (d) A certificate of license may be issued in accordance with the provisions of
5 this Article upon payment of the annual license fee by such corporation, partnership, or
6 owner of the business conducted under an assumed or trade name, as the case may be,
7 and the names and qualifications of the individual licensee or licensees connected
8 therewith shall be indicated on the license.

9 (e) Any person, firm, partnership, or corporation licensed in accordance with the
10 provisions of this Article shall exercise general supervision over contracts to
11 completion.

12 (f) Any licensee who engages in the business of masonry contracting shall post
13 the license in an obvious place in the licensee's business location, and shall indicate the
14 license number on all proposals, contracts, and building permit applications.

15 **"§ 87-129. Audit oversight.**

16 The State Auditor shall have audit oversight of the North Carolina State Board of
17 Examiners in Masonry Contracting pursuant to Article 5A of Chapter 147 of the
18 General Statutes."

19 Sec. 2. This act shall become effective on January 1, 1990, and shall apply to
20 applications for licensure submitted on or after that date, except that G.S. 87-129 and
21 G.S. 87-118 through G.S. 87-121 are effective upon ratification.